

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

ANTHONY MICHAEL MARCELLI,

Case No. 3:15-cv-00544-MMD-WGC

Petitioner,

ORDER

v.

ANTHONY VIERRA, et. al,

Respondents.

Petitioner, a Nevada prisoner, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Dkt. no. 1) Petitioner has failed to submit an application to proceed in *forma pauperis* or pay the filing fee. Accordingly, this matter has not been properly commenced. 28 U.S.C. § 1915(a)(2) and Local Rules LSR1-1, 1-2.

Thus, the present action will be dismissed without prejudice to the filing of a habeas petition pursuant to 28 U.S.C. § 2254 on the form required by this Court in a new action with either the \$5.00 filing fee or a completed application to proceed *in forma pauperis* on the proper form with both an inmate account statement for the past six (6) months and a properly executed financial certificate.

It is therefore ordered that this action is dismissed without prejudice to the filing of a petition in a new action with either the \$5.00 filing fee or a properly completed application form to proceed *in forma pauperis*.

It is further ordered that a certificate of appealability is denied, as jurists of reason would not find the Court's dismissal of this improperly commenced action without prejudice to be debatable or incorrect.

1 It is further ordered that the Clerk send petitioner two (2) copies each of an  
2 application form to proceed in forma pauperis for incarcerated persons and a noncapital  
3 Section 2254 habeas petition form, one copy of the instructions for each form, and a  
4 copy of the papers that he submitted in this action.

5 It is further ordered that the Clerk enter judgment accordingly and close this  
6 case.

7 Dated this 8<sup>th</sup> day of December 2015.

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10 MIRANDA M. DU  
11 UNITED STATES DISTRICT JUDGE  
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